United States Department of Labor
Employees' Compensation Appeals Board

D.C., Appellant	)	
	)	
and	)	**Docket No. 11-1913**
	)	**Issued: April 6, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Fort Worth, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 19, 2011 appellant filed a timely appeal from a February 24, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case. The record also contains a May 9, 2011 decision denying merit review of a March 23, 2010 wage-earning capacity determination.[2]

ISSUE

The issue is whether appellant is entitled to an additional schedule award for his left leg.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant filed a timely separate appeal of the May 9, 2011 decision and the Board will consider the issue under Docket No. 12-202.

FACTUAL HISTORY

On February 3, 2007 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he slipped while walking in the performance of duty and twisted his left knee and ankle.[3] OWCP accepted the claim for a torn medial meniscus of the left knee and left leg osteoarthritis. Appellant underwent left knee surgery on October 30, 2007 and November 24, 2008.

In a report dated October 12, 2009, Dr. Stephen Fowler, a family practitioner, provided a history and results on examination. He diagnosed a left knee injury with surgery and resulting extension lag and flexion contracture. Dr. Fowler opined that appellant had a 22 percent left leg impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*). He stated that 10 percent of the impairment was for extension lag motion deficit. Dr. Fowler did not specifically identify any tables under the A.M.A., *Guides*.

An OWCP medical adviser reviewed Dr. Fowler's report and in a report dated December 29, 2009 opined that it was insufficient to evaluate the employment-related permanent impairment. OWCP referred appellant to Dr. Robert Holladay, an orthopedic surgeon. In a report dated February 17, 2010, Dr. Holladay provided a history and results on examination. He opined that, under Table 16-3 of the A.M.A., *Guides*, appellant had a two percent left leg impairment for a partial medial meniscectomy.

In a brief report dated April 5, 2010, Dr. Fowler stated that Dr. Holladay apparently did not notice that appellant had extension lag and flexion contracture that affected appellant's gait. He stated that Dr. Holladay did not properly "apply all the surgical factors" and he did not concur with Dr. Holladay's impairment rating.

The record indicates that, pursuant to the March 26, 1999 injury claim, on August 5, 2010 appellant received a schedule award for an 11 percent impairment to the left leg. An April 13, 2010 report from an OWCP medical adviser concurred with Dr. Holladay that the left knee impairment was two percent under Table 16-3 of the A.M.A., *Guides*. In a report dated August 2, 2010, an OWCP medical adviser opined that appellant had an additional nine percent left leg impairment based on sensory and motor deficits from the back injury.

In a report dated February 22, 2011, an OWCP medical adviser opined that appellant was not entitled to an additional schedule award for the left leg based on the left knee injury. The medical adviser opined that the left knee impairment was two percent for the partial meniscectomy and appellant had already received a schedule award that included the two percent impairment.

Appellant argues that previous impairment ratings were distinct and separate from each other.

[3] The Board notes that appellant had a prior claim for a back injury on March 26, 1999.

By decision dated February 24, 2011, OWCP determined that appellant was not entitled to an additional schedule award for the left leg.

LEGAL PRECEDENT

The schedule award provisions at 5 U.S.C. § 8107 provide that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[4] Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[5] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.[6]

With respect to a knee impairment, the A.M.A., *Guides* provide a regional grid at Table 16-3. The class of impairment (CDX) is determined based on specific diagnosis, and then the default value for the identified CDX is determined. The default value (grade C) may be adjusted by using grade modifiers for Functional History (GMFH) Table 16-6, Physical Examination (GMPE) Table 16-7 and Clinical Studies (GMCS) Table 16-8. The adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[7]

ANALYSIS

In the present case, appellant submitted medical reports from Dr. Fowler with respect to a left knee permanent impairment. The reports are of diminished probative value as Dr. Fowler did not provide an explanation nor indication as to how he was applying the A.M.A., *Guides*. He did not specifically refer to any table or state how he applied the table. In addition, Dr. Fowler appeared to include both range of motion and other factors in his February 17, 2010 opinion that appellant had a 22 percent left leg impairment. The A.M.A., *Guides* state that most impairments are based on the diagnosis approach, using a regional grid such as Table 16-3.[8] In addition, range of motion is primarily used as a physical examination adjustment factor and is only used to determine actual impairment values when it is not possible to otherwise define impairment.[9] Range of motion also cannot be combined with other approaches.[10] While Dr. Fowler stated that

[4] This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

[5] *A. George Lampo*, 45 ECAB 441 (1994).

[6] FECA Bulletin No. 09-03 (issued March 15, 2009).

[7] The net adjustment is up to +2 (grade E) or -2 (grade A).

[8] A.M.A. *Guides* 497.

[9] *Id.*

[10] *Id.*

he disagreed with Dr. Holladay in his April 5, 2010 report, he did not provide a probative medical opinion as to the substance of his disagreement with Dr. Holladay's impairment rating with regard to the degree of permanent impairment based on the left knee injuries.

The only medical reports with a proper opinion under the A.M.A., *Guides* are the reports of Dr. Holladay and the medical adviser. Under Table 16-3, a partial meniscal tear has a grade C (default) impairment of two percent.[11] As to grade modifiers, Dr. Holladay used a GMFH of 1 for a mild problem of antalgic limp, and 1 for GMPE, for mild palpatory findings and loss of range of motion. He did not use clinical studies as this was used for placement in the regional grid.[12] Applying the adjustment formula noted above, there is no adjustment from the grade C impairment of two percent.

Therefore the weight of the medical evidence indicates that under the sixth edition of the A.M.A., *Guides* appellant has a two percent left leg impairment based on the left knee meniscal injury. Since the record indicates that appellant previously received a schedule award for an 11 percent permanent impairment for the left leg, that included the left knee meniscal injury, appellant is not entitled to an additional schedule award for the left leg.

On appeal, appellant argues that the impairment ratings he previously received were for different injuries and were not the same impairments. A review of OWCP File No. xxxxxx280 clearly indicated that the 11 percent left leg permanent impairment included a 2 percent impairment for the left knee meniscal injury based on Table 16-3. It is well established that benefits payable under 5 U.S.C. § 8107(c) are reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.[13] In this case, the two percent left leg impairment would duplicate the prior schedule award for the left knee meniscal injury. Appellant may submit additional medical evidence with left leg permanent impairment and request an increased schedule award based on the new medical evidence.

CONCLUSION

The Board finds that appellant has not established entitlement to an additional schedule award for the left leg.

[11] *Id.* at 509, Table 16-3.

[12] *Id.* at 516.

[13] *T.S.*, Docket No. 09-1308 (issued December 22, 2009); 20 C.F.R. § 10.404(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 24, 2011 is affirmed.

Issued: April 6, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board